customers announcing modifications in the terms and conditions of service. Such delay will only increase the carrier's costs and ultimately its rates.

E. The Curtailment Of Consumer Services And Loss Of Carrier Efficiency That Could Result Under A System Of Mandatory Detariffing Are Not Offset By Any Conceivable Benefits.

The *Notice* does not mention, let alone discuss, the possibility that mandatory detariffing might have some adverse consequences for consumers and IXCs. Rather, it simply repeats the general reasons advanced by the Commission over a decade ago as to why the elimination of nondominant carriers' tariffs for interstate, domestic interexchange services would be beneficial. It notes that the imposition of tariff obligations "stifles price competition," *Notice* at ¶29, and that in the *Sixth Report and Order* the Commission found that tariff filing requirements "take away [nondominant] carriers' ability to make rapid, efficient responses to changes in demand and cost"; "impede and remove incentives for competitive price discounting"; and "impose costs on carriers that attempt to make new offerings." *Id.* at 30. However, such reasons appear to have little or no validity in today's increasingly competitive telecommunications marketplace and a regulatory environment in which tariffs may take effect on one day's notice.

Tariffs, which, as stated, continue to be filed by both AT&T and its major nondominant competitors up to the present time, plainly did not, as the Commission recognizes, "stifle" the development of a highly competitive market. Similarly, the requirement that carriers file tariffs has not "stifled" marketing and service innovations or price discounting. The domestic interexchange market of today is characterized by a plethora of price and service options offering substantial savings to consumers. Indeed, there is such a variety of discounted pricing plans that Sprint thought it necessary to introduce its Sprint Sense™ service product in the residential market and its Business Sense™ service product in the small-to medium-sized business market, both of which offer straight-forward, easy to understand, flat rate prices to consumers.

The primary gating element in the rapid introduction of new price or service options is market research and testing. The decision by a carrier to introduce a new service product will depend upon the product's predicted acceptance by consumers as determined by the carrier's market research. Any requirement that carrier will have to tariff a new product or service option on one day's notice imposes no meaningful additional delay.

On the contrary, tariffs shorten the time needed to introduce new product or service offerings. Tariffs filed on one day's notice allow a carrier to change its rates with minimal delay and with minimal notification to competitors. Without tariffs, nondominant carriers would likely be required to give advance notice to their customers before changing their rates. A separate mailing to accomplish this is, as noted, quite expensive, and even with such a separate mailing, it would not be possible to notify all customers within a day or on the same day. If a bill stuffer were used for notification (and this would ordinarily seem by far the most practical alternative for widely provided services), rate changes would be delayed further by perhaps a month or more to coincide with each customer's billing cycle.

The other reasons advanced by the Commission in favor of mandatory detariffing are equally unavailing. First, the Commission states that the elimination of tariffs would prevent nondominant carriers from engaging in anticompetitive price collusion. *Notice* at ¶30; *see* also, *id.* at ¶34. Although allegations that the domestic interexchange market is characterized by price collusion among the larger IXCs have often been made, such allegations have never been supported by any

reliable evidence. The Commission itself dismissed the "evidence" presented by the RBOCs and others on "tacit price coordination among AT&T, MCI and Sprint" as "conflicting and inconclusive." *Motion of AT&T to be Reclassified as a Non-Dominant Carrier, Order,* FCC 95-427, released October 23, 1995 (*Reclassification Order*) at ¶83.

It is, of course, difficult to accept the notion that tacit price collusion is occurring in a market which the Commission has found is becoming increasingly competitive despite the fact tariffs are required to be filed. Collusive pricing behavior would not ordinarily be a problem in such a market. Moreover, it is impossible to use tariffs as a mechanism for collusive pricing when tariff changes become effective on one day's notice.

As already shown, the delay brought about by the need for individual notice to customers would also give competitors far more warning of any rate change than would be accorded by a tariff filed on one day's notice. Thus, to the extent that collusive pricing by long distance carriers is considered to be a problem by the Commission, tariffing alleviates, rather than aggravates, such a problem.

Second, the Commission regards as a positive benefit the fact that carriers would no longer be able to invoke the "filed

rate doctrine" to unilaterally change the rates, terms and conditions of service. *Id.* However, in an "unregulated environment," customers are usually presented with a "take-it-or-leave-it price for most of the goods and services they purchase, and they generally pay the provider before receiving the good or service. Sellers are also able to change the price of their products as the market dictates, and without consultation with customers, especially smaller customers. If a customer objects to such changed price, generally the only option is to take one's business elsewhere. Customers of IXCs, especially those in the residential and small business markets, have the same option, even under today's tariff regime since they do not commit to any long term arrangement with the carrier.

Thus, the Commission's concern about the ability of carriers to invoke the filed rate doctrine would appear to be relevant only to those customers that take service under contract tariffs or other long-term service plans offered by the carrier. *Notice* at ¶34 (speaking of the filed rate doctrine as giving carriers the unilateral right "to change rates, terms and conditions of contract tariffs and other long-term service arrangements..."). But, even in such cases, the basis of the Commission's concern here is not immediately apparent. Carriers cannot unilaterally

change or run away from long term service commitments. Under the *RCA Americom* series of decisions, a carrier entering into a term arrangement with a customer must demonstrate "substantial cause" before it can "materially revise long-term service or contract tariffs." *Notice* at ¶95. Presumably, the "substantial cause" requirement of *RCA Americom* would continue to apply if permissive detariffing were adopted.

Accordingly, once a carrier files a term arrangement with a customer in a tariff, the carrier could not withdraw from such arrangement by changing its tariff filing absent "substantial cause," and it would be the Commission which would have the discretion to determine whether "substantial cause" exists. It is difficult to understand why the Commission regards the elimination of such discretion as beneficial.

In any case, there is no basis for eliminating the tariff filing requirements for broad-based services offerings because of any perceived problem with the application of the filed rate doctrine to those relatively few long-term service arrangements taken by large business customers. To the extent that any problem exists because of the application of the filed rate doctrine to contract tariffs containing long-term arrangements with large business customers, any solution should be similarly

limited. Any requirement for mandatory detariffing should only apply to those long-term arrangements contained in contract tariffs.[10]

Third, the Commission's apparent hostility to "limitations of liability provisions" in carrier tariffs is difficult to understand. *Notice*, ¶34. Common carriers limit their liability for consequential damages due to ordinary negligence because they must provide service upon demand: carriers are not allowed to ascertain the purpose of the call, and cannot be expected to know the value that the caller places on any particular call. Absent the protections afforded by limitation of liability provisions, a carrier would be forced to significantly increase its rates to cover the possibility that it would have to pay millions of dollars in consequential damages as a result of some negligent act. As with other changes suggested by the Commission, the impact of such increased expenditures will fall proportionately more heavily on smaller users because the carrier is unlikely to find it attractive as a business matter to provide service to

[10] Sprint believes that mandatory detariffing of contract tariffs or tariffs tailored to the needs of individual customers would not cause any real difficulty. Unlike tariffs for widely provided services, they are unnecessary and provide no useful information to the Commission, customers or competitors.

customers that make relatively few phone calls per year but whose subscribership would leave the carrier potentially liable for enormous amounts. And this is particularly true here, because of the presence of complicating factors such as the increased risk of fraud, increased customer processing changes, etc.

Finally, limitation of liability provisions are prevalent in the competitive marketplace, and carriers will certainly seek to include these limitations in their standard terms and conditions of service. Such limitations are not dependent on tariffs.

* * * * *

For the reasons discussed above, it is clear that the problems which would arise under the mandatory detariffing proposal by the Commission are not outweighed by any conceivable benefits. Thus, Sprint strongly recommends that the Commission abandon its effort to eliminate the tariff filing requirements for nondominant carriers and adopt permissive detariffing policy instead.

II. THE COMMISSION SHOULD AMEND ITS RULES TO ALLOW NONDOMINANT IXCS TO OFFER BUNDLED PACKAGES OF CPE AND INTEREXCHANGE SERVICES.

Sprint supports the Commission's proposal "to allow non-dominant carriers to bundle CPE with interstate, interexchange services." *Notice* at ¶88. Given the dramatic changes that have

occurred in both the CPE and interexchange markets since 1980,[11] the application of such rule to nondominant carriers can no longer be justified.

The Commission explains that the prohibition was instituted because with the advent of competition in the CPE market,

> ... continued bundling of telecommunications services with CPE could force customers to purchase unwanted CPE in order to obtain necessary transmission services, thus restricting customer choice and retarding the development of a competitive CPE market. *Notice* at ¶84.

Nonetheless, as the Commission explained in its *Computer II* decision,

> [i]f the markets for the components of the commodity bundle are workably competitive, bundling may present no major societal problems so long as the consumer is not deceived concerning the content and quality of the bundle. 77 FCC 2d at 443 n. 52.

Such explanation strongly suggests the elimination of the CPE bundling prohibition.

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[11] This was the year in which the Commission, in *Computer II* (*Second Computer Inquiry*, 77 FCC 2d 384 (1980), adopted the rule prohibiting carriers from bundling CPE with their service offerings.

There is simply no longer any "societal" or other reason to maintain the bundling prohibition. Both the CPE and domestic interexchange markets are now "workably competitive." *Notice* at ¶84.[12] Further, it has been Sprint's experience that many consumers seek to reduce their transaction costs by requesting that Sprint provide both the communications services and equipment in a bundled package. And, any possible "consumer deception" that may arise as a result of lifting the ban can be mitigated simply by requiring that each nondominant carrier offering a bundled package also provide interstate interexchange services separately on an unbundled basis. In fact, the unbundled provision of services would appear to be necessary under the commitments made by the U.S. Government in the Uruguay Round Agreements of the General Agreement on Tariffs and Trade. *Notice* at ¶89. Thus, the Commission's proposal to allow

[12] Even assuming that, contrary to the Commission's finding in the *Reclassification Order*, AT&T retains market power in the provision of domestic interexchange market, there would appear to be little danger that AT&T would seek to leverage such dominance to foreclose sales in the CPE market. Once AT&T divests its equipment manufacturing subsidiary, it presumably will no longer have any incentive to tie its provision of services to the equipment provided by such divested company.

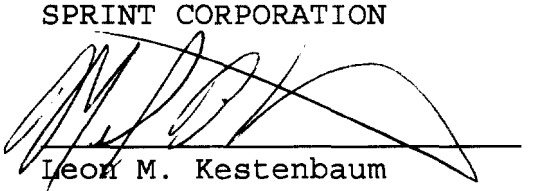
nondominant carriers to bundle their services with CPE should be adopted.[13]

III. CONCLUSION.

Wherefore, Sprint respectfully requests that the Commission (1) abandon its mandatory detariffing proposal; (2) reinstate its successful permissive detariffing policies of the past; and (3) eliminate the prohibition on bundling CPE with communications services.

Respectfully submitted,

SPRINT CORPORATION



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April 25, 1996

[13] Sprint suggests, however, that the Commission require that such packaged offerings be made available on an off-tariffed basis only. A carrier's tariffs should not, and Sprint believes may not, include an offering (bundled or otherwise) containing non-communications services.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "**COMMENTS OF SPRINT ON SECTIONS III, VII, VIII AND IX OF NOTICE OF PROPOSED RULEMAKING**" was delivered by hand on this the 25th day of April, 1996 to the below-listed parties:

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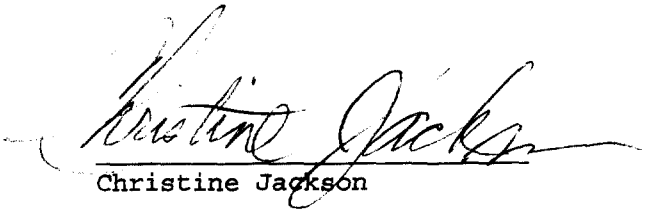

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April 25, 1996